

United States Senator Orrin G. Hatch
Senate Committee on Finance

Hearing on The President's Fiscal Year 2012 Budget Proposal, The Honorable Kathleen Sebelius Testifying

Opening Statement

February 15, 2011

Thank you Mr. Chairman.

Madame Secretary, thank you for joining us here today.

We have a lot to talk about.

As you may have heard, the President released his Fiscal Year 2012 Budget yesterday. And as you may have also heard, it has not received the warmest of receptions. It is one thing to have Republicans criticizing you for failing to outline meaningful deficit reduction. But you know you have a problem when even mainstream media outlets voice skepticism about this budget's ability to right our fiscal ship.

Even before the President released his budget, members of this committee were eager to hear from you. This is your first appearance before this committee since the enactment of the Patient Protection and Affordable Care Act (PPACA) last March.

To be frank, that is a long time. I am sure, you will agree with me on that.

Congress is a coequal branch of government, endowed by the Constitution with the entirety of the legislative power. And this committee, in particular, has oversight of your department's operations and application of the laws that we pass.

Yet since you were last here, almost a year ago, your agency has been responsible for thousands of pages of regulations implementing the 2,700 page health care law, with next to no opportunity for public oversight by this committee.

We can all agree that the implementation process would have benefited from some careful oversight.

The process of implementing the health care bill has at times been chaotic, due in no small part to the decision to delegate so much rulemaking authority to a sprawling federal bureaucracy, and the fast-tracking of implementation timelines.

The result has been not only a rush to promulgate rules, but a need to issue subsequent subregulatory guidance in the form of Releases, Notices, Frequently Asked Questions, and Model Notice Language Samples that clarify and revise previously issued rules.

I know that many on this committee have questions about both the process and the substance of this implementation process.

This committee's questions for you have increased exponentially with the release of the President's budget. Last fall, it was clear that the people in my state of Utah — and I think every state in the union — voiced a desire for smaller government and less spending.

The citizens of this nation spoke.

But they were not given a voice in this budget.

The President sent us a budget that promises \$1.1 trillion in deficit reduction over ten years. That might sound like a lot of money, until you consider that this year's deficit alone is over \$1.6 trillion. Judging from the reaction of even the mainstream media this morning, I don't see that there is any way to spin these numbers into a good story. So I look forward to a forthright conversation with you today.

Here are just a few of the items that need to be addressed.

First, there is almost no effort in this budget to deal with the existing, and ever growing, crisis of Medicaid financing. While the budget acknowledges the \$111 billion collective shortfall that states are facing in 2011 alone, it fails to give flexibility to states in managing the nearly one-quarter of their budgets, which is spent on Medicaid. Specifically, it fails to respond to requests from governors for relief from the health law's onerous Medicaid maintenance of effort restrictions.

Second, this budget increases the size of the Department of Health and Human Services by more than 4,700 bureaucrats just in the next two years largely to implement this partisan \$2.6 trillion health care law. It is important to note that just last week the Congressional Budget Office (CBO) said that this new health law will be responsible for the loss of 800,000 jobs at a time when our unemployment rate continues to stagnate north of 9 percent. Americans have said over and over again – they want smaller government and more private sector jobs, not the other way around.

Third, there is some real smoke and mirrors in this budget. Just take a look at the physician payment fix or doc-fix. By your own estimates, the ten year cost of a doc fix, simply with a zero percent update, stands at an astonishing \$370 billion. Although the health care law cut more than \$529 billion out of an insolvent Medicare program to fund new entitlement spending, it did not even attempt to address this fundamental flaw in the program. At the end of this year alone, physicians will face a 28 percent cut in their payments, seriously threatening access for millions of seniors. The SGR should have been permanently fixed in so-called comprehensive health care reform. I suspect that the desire to spin that legislation as saving money had something to do with leaving out a fix that everyone knows will cost hundreds of billions of dollars.

Although this budget attempts to provide a two-year doc-fix, the largest single piece of savings outlined in the budget to pay for it is \$18 billion from a reduction in Medicaid provider taxes, placing a further strain on state budgets who are already struggling under the burdensome unfunded mandates of this new law. The budget also calls for nearly \$13 billion in savings by reducing the exclusivity periods for follow-on biologics and changes to so-

called “pay-for-delay” arrangements. These proposals not only fly in the face of bipartisan agreements made in Congress, but more importantly will significantly harm incentives for innovation of life-saving medical treatments.

The problem with this budget is not just the failure to make meaningful cuts.

It is also that the failure to reduce government expenditures requires damaging revenue raisers. Investments in new medicines cost billions of dollars and years of effort. If businesses are going to invest in these life changing and lifesaving medicines, they need to have some expectation that they will recoup those investments. Yet, the proposal to reduce the period of data exclusivity unnecessarily undermines this crucial industry in order to generate revenue that will go toward financing wasteful government spending.

I will have more to say on this issue with your colleague, Secretary Geithner, tomorrow, but the assumption that the tax rates will expire in 2012 will have far reaching consequences for the small business owners who account for half of all small business flow-through income. Those small business owners would see their marginal rates hiked by 17 percent to 24 percent under this budget.

I find it hard to believe that this revenue raiser will not adversely impact the ability of small businesses to hire more workers and provide meaningful health benefits to their employees.

And I am curious what analysis has been done by the Office of Management and Budget (OMB) or the Department of Health and Human Services (HHS) about the impact of these tax hikes on the cost of the new entitlements in the health law. If we are making it harder for businesses to provide health benefits to their employees, more employees are going to get their health coverage from the federal government.

Finally, I would be remiss if I failed to address the growing red elephant in the room — that fact that our broken entitlements are pushing our country closer to bankruptcy with every passing day.

The President’s Fiscal Commission recommended serious reforms to our entitlements. But to borrow from one liberal blogger’s analysis of this budget, it is almost like the Fiscal Commission never happened. The President has the responsibility and the charge to lead on entitlement reform. There is no bypassing this responsibility. This budget, unfortunately, shows a real lack of leadership on this critical matter. Here is what Washington Post had to say — *Having been given the chance, the cover and the push by the fiscal commission he created to take bold steps to raise revenue and curb entitlement spending, President Obama, in his fiscal 2012 budget proposal, chose instead to duck. To duck, and to mask some of the ducking with the sort of budgetary gimmicks he once derided*

Madame Secretary, thank you for coming here today. Under the best of circumstances, testifying before Congress can be like going into the lion’s den. In this case, since it has been so long since you have testified, it is like you are going into a den where the lions have not been fed in a few weeks.

But I promise we will be kind.

We look forward to talking with you today and continuing this conversation on a more regular basis in the future.